Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1082

REUBIN O'D. ASKEW, et al.,

Appellants,

vs.

THE AMERICAN WATERWAYS OPERATORS, INC., et al.,

Appellees.

On Appeal from the United States District Court for the Middle District of Florida.

JURISDICTIONAL STATEMENT

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LAW REVIEWS & BOOKS

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No.

REUBIN O'D. ASKEW, et al.,

Appellants,

vs.

THE AMERICAN WATERWAYS OPERATORS, INC., et al.,

Appellees.

JURISDICTIONAL STATEMENT

Appellants appeal from that final judgment with memorandum opinion and permanent injunction entered by the United States District Court, Middle District of Florida, on December 10, 1971, enjoining enforcement of the Florida Oil Spill Prevention and Pollution Control Act, Chapter 70-244, Laws of Florida, 1970, published as Chapter 376, Florida Statutes (1970), for reason that said statute violates Article III, Section 2, Clause 3 of the Constitution of the United States.

Opinion Below

The appealed Order of the United States District Court, Middle District

of Florida, has not yet been reported. A copy thereof is included herewith in the Appendix (A 1-31).

Jurisdiction

This appeal is from a final order entered in a suit for injunctive relief pursuant to 28 U.S.C. §§ 2281, 2284(3). The order was entered December 10, 1971. Notice of Appeal was filed in the United States District Court, Northern District of Florida, December 23, 1971. Jurisdiction of this Court is invoked in accordance with provisions of 28 U.S.C. § 1253, authorizing appeal from an order of a three-judge court permanently enjoining enforcement of a state statute when such order gives rise to a substantial question such as one involving conflict between state and federal interests.

Questions Presented

(1) Whether the District Court erred in declaring unconstitutional a statute designed to protect the state, its citizens, and its environment from economic and ecological damage resulting from massive pollution of its territorial waters incident to an occurrence during the transport of oil or other substances by sea, on ground that in Article III, Section 2, Clause 3, United States Constitution, the states surrendered to

the federal government all power to enact substantive legislation affecting maritime commerce.

2. Whether the District Court erred in construing the Federal Water Quality Improvement Act of 1970, Pub.L. 91-224, 91st Congress, 2d Session (April 3, 1970); 33 U.S.C. § 1161 et seq. as preempting the states from enacting legislation imposing absolute and unlimited liability upon owners or operators of vessels or terminal facilities which cause massive pollution of the state's territorial waters by oil or other substances.

Statutes Involved

Chapter 70-244, Laws of Florida, 1970, published as Chapter 376, Florida Statutes (1970), is too lengthy for inclusion verbatim, and is set out in the Appendix (A 32-41).

Chapter 16B-16.08, Regulations, Department of Natural Resources, State of Florida, promulgated in accordance with Chapter 70-244, §§ 7, 14, Laws of Florida, 1970, is set out in the Appendix (A 42-44).

The Water Quality Improvement Act of 1970, Pub.L. 91-224, 91st Congress, 2d Session (April 3, 1970), Codified as 33 U.S.C. § 1161 et seq. is also set out in appropriate part in the Appendix (A 45-56).

The Limitation of Liability Act, originally Chapter 43, Section 3, 9 Stat. 635 (March 3, 1851), amended and codified as 46 U.S.C. § 183 (1964) is set out in the Appendix (A 57).

Article III, Section 2, United States Constitution, the Ninth Amendment to the United States Constitution, and the Tenth Amendment to the United States Constitution are set out in the Appendix (A 58-59).

Statement of the Case

The Water Quality Improvement Act of 1970, Pub.L. 91-224, 91st Congress, 2d Session, 33 U.S.C. § 1161 et seq. (hereafter "W.Q.I.A." in citation; "Federal Act" in text) became law April 3, 1970, while the Florida legislature was in anuual session. The Federal Act prohibits the discharge by vessels of oil into navigable waters of the United States or the contiguous zone. W.Q.I.A. §§ 11(a), (b), et seq. Should such a discharge occur through willful negligence or willful misconduct within privity or knowledge of the owner or operator of the vessel, the government may recover the entire clean-up cost from the owner or operator. W.Q.I.A. § 11(f)(1). If a discharge occurs other than from willful negligence or misconduct, the government can recover clean-up costs unless the owner or operator can prove any of four defenses: act of God, act of war,

negligence on the part of the government, or act or omission of a third party. W.Q.I.A. § 11(f)(1).

This strict liability is not without limitation, however. Recovery is limited to $100 per gross ton of the vessel or $14 million, whichever is less. W.Q.I.A. § 11(g). Consequential damages, or costs imposed by such a discharge on other than "the government," are not recoverable under the Federal Act.

The Federal Act also requires owners of vessels of more than 300 gross tons using United States ports or navigable waters to establish and maintain evidence of financial responsibility equal to the aforementioned limits by insurance, surety bonds, qualification as a self-insuror, or other means. W.Q.I.A. § 11(p)(1). In the event of a discharge, the government may proceed directly against the insuror who has benefit of all defenses available to the vessel owner or operator. W.Q.I.A. § 11(p)(3).

Section 11(o)(2) of the Federal Act reads:

> Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State.

The Florida Oil Spill Prevention and Pollution Control Act, Chapter 70-244, Laws of Florida, 1970; Chapter 376, Florida Statutes (1970) (hereafter referred to in citation by chapter number and in text as "Florida Act") was a Committee Substitute for Senate Bill No. 450 (A 32). It passed the legislature less than 90 days after the Federal Act became law, was approved by the Governor June 30, 1970, and took effect in part the following day (A 41). Provisions of the Federal Act were fresh in the minds of committee members. Federal-State cooperation is keynoted throughout the State Act.

> The legislature further declares that it is the intent of this act to support and complement applicable provisions of the federal water quality improvement act of 1970[1] [[1] 33 U.S.C.A. § 1151 et seq.], specifically those provisions relating to the national contingency plan for removal of oil and other pollutants. Ch. 71-244, Laws of Florida, 1970, § 2(6).
>
> Nothing in this act shall affect in any way the right of any person who renders assistance in containing or removing oil or other pollutants to reimbursement

> for the costs of such containment or removal under the applicable provisions of the federal water quality improvement act of 1970[1] [[1] 33 U.S.C.A. § 1151 et seq.] or any rights which said person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of such oil or other pollutants. Ch. 71-244, Laws of Florida, 1970, § 8(5).
>
> This act, being necessary for the general welfare, the public health, and the public safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under this act and the federal water quality improvement act of 1970[1] [[1] 33 U.S.C.A. § 1151 et seq.]. Ch. 70-244, § 21, Laws of Florida, 1970.

Limitations of the Federal Act were also fresh in the minds of state legislative committee members who recognized gaps in protection afforded by the Federal Act, and sought to fill those gaps with safeguards peculiarly necessary to Florida. Instead of liability limited by gross tonnage of an offending vessel up to an arbitrary ceiling for pollution by oil alone, the Florida Act imposes unlimited liability without fault upon vessels discharging other pollutants as well as oil while destined for or leaving any Florida port.

Ch. 70-244 § 12, Laws of Florida, 1970. Instead of recovery limited to clean-up costs of the State alone, the Florida Act provides for damages "resulting from injury to others." Ch. 70-244, § 12. Terminal facilities, whether onshore or offshore, are subject to the same liability as vessels. Ch. 70-244, § 3(9). Owners and operators are liable, Ch. 70-244, § 12, and must maintain satisfactory evidence of financial responsibility measured by $100 per gross ton of the largest vessel up to a $5 million ceiling as opposed to the $14,000,000 limit in the Federal Act. Ch. 16B-16.08, Regs. Department of Natural Resources, State of Florida; Ch. 70-244, §§ 7, 14. (A 42-44). Special containment gear and crews trained in use thereof is required, Ch. 70-244, § 7(1)(a), and vessels are subject to inspection by state officials to ascertain presence of such gear and to assess seaworthiness of the ship prior to entry into any Florida port. Ch. 70-244, § 7(c).

The effective date for regulatory requirements of the Florida Act, including financial responsibility and unlimited and absolute liability provisions, was extended by the Board of Natural Resources to March 15, 1971.

Suit was filed March 9, 1971, and a hearing on plaintiffs' application for temporary restraining order was held March 11-12, 1971.

Plaintiffs and intervenors include merchant shippers, world shipping

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associations which insure an estimated three-fourths of the world's tonnage, certain members of the Florida coastal barge and towing industry, and owners and operators of oil terminal facilities and heavy industries located in Florida ports.

Defendants are members of the Cabinet of the State of Florida, before the Court in dual capacities. They were sued in their official position as highest elected officers of the state, and they were sued as members of the Board of Natural Resources. Also included are the director of the Department of Natural Resources, and a conservation officer. The State of Florida intervened as a party defendant on ground that interests to be adjudicated were much broader than those protected by the Department of Natural Resources.

At the two-day hearing on plaintiffs' application for temporary restraining order, testimony of plaintiffs' representatives revealed that not one of them had attempted to comply with the Florida Act or regulations issued thereunder, but that shippers had advised them that vessels would be diverted from Florida ports if the Act were implemented. Indeed, certain vessels had in fact been diverted to ports in other states. Testimony of an employee of the Department of Natural Resources was to the effect that some 669 vessels had been approved for traffic to and from Florida ports, their owners or operators having complied in advance with financial responsibility requirements. The temporary restraining order was subsequently entered

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nunc pro tunc to March 12, 1971.

The three-judge panel was convened and heard this cause on April 27, 1971. Judgment of the District Court was entered December 10, 1971, with a memorandum opinion finding (1) that maritime law 'evolved' under Article III, Section 2 of the United States Constitution, augmented from time to time by the federal judiciary, and changed further by congressional enactment, such as the Water Quality Improvement Act of 1970; (2) that the Federal Act is 'tangible evidence' that the Florida Act is an unconstitutional intrusion into the federal maritime domain because it makes changes in substantive maritime law such as providing absolute and unlimited liability for owners and operators of offending vessels, and because it also contains provisions for compensating state and private parties for property damage as well as clean-up costs; (3) that oil-spill pollution is a maritime tort governed strictly by rules of admiralty law and is exclusively within the federal domain; (4) that since the Florida Act substitutes absolute and unlimited liability for admiralty's negligence and unseaworthiness tests and severely limited liability, it contravenes federally protected tenets of maritime law and is invalid upon the authority of Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917); (5) that to permit Florida to legislate in such fashion would be to 'sound the death knell to the principle of uniformity'; (6) that limited remedies and relief available under the Federal Act

notwithstanding, Congress did not leave 'gaps' in oil-spill pollution laws for the states to fill in -- even though the Federal Act fails to provide a remedy, the states are nonetheless precluded from creating one -- under authority of Moragne v. United States Lines, Inc., 398 U.S. 375 (1970); (7) that the pre-emption disclaimer of Section 11(o)(2) of the Federal Act does not mean what it says because Congress lacks power to permit states to legislate requirements or liabilities with respect to discharge of oil within state waters when such legislation might tend to affect -- or conflict with established rules governing -- maritime commerce, on authority of Knickerbocker Ice Company v. Stewart, 253 U.S. 149 (1920), The Lottawanna, 21 Wall. 558 (1875) and The Steamer St. Lawrence, 1 Bl. 522 (1862); and (8) that the Florida Act must fall in its entirety, despite a severability clause, because, absent fatally defective provisions, the Act 'would not comprise a coherent legislative scheme,' a point that will not be disputed on appeal.

Notice of Appeal was filed with the United States District Court, Middle District of Florida, on December 23, 1971.

Questions Presented Are Substantial

Appellants submit that the action taken, memorandum opinion, and final judgment of the District Court present

substantial questions which warrant acceptance of jurisdiction by the Court at this time.

I.

The first substantial question is whether the fact that judicial power of the United States is extended "to all Cases of admiralty and maritime jurisdiction" by Article III, Section 2 of the United States Constitution stands as a permanent barrier in the path of state legislatures seeking to protect citizens, property, ecology, economy, and general welfare from the deleterious effects of massive oil-spill pollution of state waters.

It should be noted at the outset that this appeal is not concerned with de-ballasting or tank-cleaning operations of ships at sea, peculiarly susceptible to treaty or international commercial agreement. See, International Convention For the Prevention of Pollution of the Sea by Oil, (May 29, 1961), 3 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3; Tanker Owners' Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP); Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL). Nor is the state concerned in this appeal with controllable pollution resulting from minor incidents such as loading spills, minor collisions, seepage, or pollution incidental to general transport

operations. Containment gear carried aboard vessels or provided at most seaports by port committees or the United States Coast Guard is usually adequate for control and clean-up of such minor hazards. Expenses for clean-up and any damage to the ecology is recoverable to the state under Chapter 403, Florida Statutes (1970). A suit in admiralty for any damage to private or state property would not be frustrated by limitation of liability proceedings inasmuch as the scope of such damages is severely restricted. Although pollution from such incidents is remedial under the Florida Act, the Act's focus is not so limited. The State of Florida does not appeal here from a loss of duplicate remedies. The state's concern is more urgent. It goes to the heart of the statutory scheme described in the Florida Act. The concern is for loss of a legislative attempt to protect the state, its citizens, economy, and environment against effects of a maritime disaster of Torrey Canyon proportions.[1]

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[1]For descriptions of this occurrence and insight into its appropriateness in the instant context, see Mendelsohn, Maritime Liability for Oil Pollution--Domestic and International Law, 38 George Washington L. Rev. 1 (Oct. 1969); Comment, Oil Pollution of the Sea, 10 Harv.Inter.L.J. 316 (1969); Nanda, The Torrey Canyon Disaster: Some Legal Aspects, 44 Denver L.J. 400 (1967); E. Cowan, OIL AND WATER, THE TORREY CANYON DISASTER (1968).

A substantial question is whether Article III, Section 2 should be construed as a surrender by the state of its power and responsibility for providing such protection (a) in any case, or (b) when such is not provided by the federal government.

In holding that the State of Florida has no such power, the District Court relied, in part, on Southern Pacific Co. v. Jensen, supra, raising a question as to the valid application of Jensen outside the arena of its own facts. Standard Dredging Corporation v. Murphy, 319 U.S. 306 (1943); Davis v. Department of Labor & Industries, 317 U.S. 249 (1942); Just v. Chambers, 312 U.S. 383 (1941); and the telling dissent of Frankfurter, J., joined by Stewart, J., in Kossick v. United Fruit Co., 365 U.S. 731 (1961).

In resting one corner of its rule upon a doctrinaire allegiance to the principle of uniformity, the District Court order presents yet another substantial question: whether the once-necessary rule of uniformity in matters maritime is still of such vitality that it categorically bars state legislatures from developing new remedies to meet wrongs peculiar to our era and to the particular state; wrongs which were undreamt of when the only fuels to propel ships were wind and steam, and before such compelling state interests as protection of the economy and environment from effects of a disaster at sea (particularly for a state such as Florida whose economy depends squarely upon its environment) gave rise to new consideration

of precisely what rights, responsibilities, and powers have been surrendered by the states and by individuals to exclusive federal jurisdiction. Unless the matter falls within such jurisdiction, a requirement of "uniformity" is misplaced. Just v. Chambers, supra.

The question is inescapable: are matters such as economic welfare of the state and its citizens, and the natural environment of the state retained by the states as topics appropriate to a proper exercise of its police power, as such is recognized by the Tenth Amendment? Or were these responsibilities of government surrendered to the federal domain? If the police power of the state extends to all the great public needs, Noble State Bank v. Haskell, 219 U.S. 104 (1911); Day-Brite Lighting, Inc. v. State of Missouri, 342 U.S. 421 (1952); Cf. Berman v. Parker, 348 U.S. 26 (1954), then surely such power resides in the state to legislate protection against, and remedies for, despoilment of property of the state and its citizens and severe injury to its environment. The fact that an exercise of such police power conflicts with tenets of maritime law does not mean that the state interest protected must in all cases give way before admiralty. Because its application is felt upon navigable waters does not mean the state interest was surrendered. Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440 (1960); Cf. Clyde Mallory Lines v. State of Alabama, 296 U.S. 261 (1935); Cooley v. Board of Port Wardens (12 How. 299 (1851).

If the Ninth Amendment protects rights peculiar to the individual beyond those specifically enumerated in the Constitution such as would vouchsafe his right to privacy, Griswold v. Connecticut, 381 U.S. 79 (1965), concurring opinion of Goldberg, J., then how can it be reasoned that the individual's right to pollution-free ocean, beaches, and estuaries is not similarly cognizable and protected by what has been referred to as the Forgotten Amendment? See, Patterson, THE FORGOTTEN NINTH AMENDMENT, Bobbs-Merrill, 1955.

This Court has recognized the deleterious effects of oil pollution of rivers and harbors, United States v. Standard Oil Company, 384 U.S. 224 (1966); New York v. New Jersey, 256 U.S. 296 (1921); Missouri v. Illinois, 200 U.S. 496 (1906); Missouri v. Illinois, 180 U.S. 208 (1901). The Standard Oil Company case involved application of a section of the Rivers and Harbors Act, 33 U.S.C. § 407, but the Court's recognition of a pollution crisis is appropriate to the instant cause. At 384 U.S. 225-226:

> This case comes to us at a time in the Nation's history when there is greater concern than ever over pollution--one of the main threats to our free-flowing rivers and to our lakes as well. The crisis that we face in this respect would not, of course, warrant us in manufacturing offenses where Congress has not acted nor in stretching statutory language

> in a criminal field to meet strange conditions. But whatever may be said of the rule of strict construction, it cannot provide a substitute for common sense, precedent, and legislative history. We cannot construe § 13 of the Rivers and Harbors Act in a vacuum . . . . Oil is oil, and whether useable or not by industrial standards it has the same deleterious effect on waterways. In either case, its presence in our rivers and harbors is both a menace to navigation and a pollutant.

In Zabel v. Tabb, 430 F.2d 199 (5Cir.1970) cert. den. 401 US 910(1971) Chief Judge Brown stated:

> In this time of awakening to the reality that we cannot continue to despoil our environment and yet exist, the nation knows, if courts do not, that the destruction of fish and wildlife in our estuarine waters does have a devastating effect on interstate commerce. (430 F.2d at 203-204)

II.

The second area of substantial questions presented by this appeal arises from the District Court's construction of Section 11(o)(2) of the Federal Act.

The order relies upon Knickerbocker Ice Company v. Stewart, supra, for authority that since Congress is powerless to confer on the states authority to legislate within admiralty jurisdiction, the Federal Act cannot be construed as an attempt to do so. So that when the Act declares: "Nothing in this section shall be construed as preempting any State . . . from imposing any requirement or liability with respect to the discharge of oil into any waters of such State," the District Court decided that Congress meant that states are free to enforce pollution control measures so long as they are within the state's constitutional prerogative--which, of course, the state needs no congressional approval to do anyway. The effect of this interpretation is that the section is a nullity. It is a substantial question as to whether this express disclaimer of preemption is congressional recognition that States should impose "requirements or liabilities" to protect themselves against effects of oil-spill pollution of their territorial waters.

Yet another substantial question emerges from the second issue noted. The Florida Act makes owners or operators of offending vessels liable to individuals who may prove damages resulting from an oil-spill to the full amount of such damages without limitation measured by the value of the vessel plus pending freight after an occurrence such as the Torrey Canyon disaster. In re Barracuda Tanker Corp., 281 F.Supp. 228 (S.D.N.Y. 1968), modified 409 F.2d 1013 (2d Cir.

1969). The object of the Florida Act is clear: protection of the innocent property-owner, state or private citizen from loss of his property without recompense. The object of the Limited Liability Act, 46 U.S.C. 183, is equally clear. It is succinctly stated in The City of Norwich, 118 U. S. 468 (1886) at page 504:

> That object was to enable merchants to invest money in ships without subjecting them to an indefinite hazard of losing their whole property by the negligence or misconduct of the master or crew, but only subjecting them to the loss of their investment.

The District Court characterized Florida's unlimited and absolute liability provisions as being directly in conflict with the Limited Liability Act and, hence, an unforgiveable intrusion into exclusive federal domain.

Of course, Congress itself pushed back the limitation of 46 U.S.C. 183 when it made owners and operators liable for the full amount of clean-up costs without regard to valuation of the vessel and pending freight under certain circumstances. W.Q.I.A. § 11(f)(1). Moreover, absent willful negligence or misconduct within privity or knowledge of the owner, the Federal Act further assaults limitations of 46 U.S.C. 183 when it provides for recovery based upon gross tonnage of the vessel up to a $14 million ceiling instead

of the arbitrary value-of-the-vessel measuring stick where simple negligence is proven. W.Q.I.A. § 11(g).

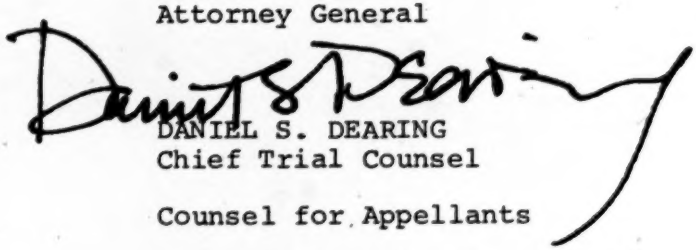
A substantial question emerges as to the continued efficacy of the Limited Liability Act in cases where the cause of action is an oil-spill. Should the State Act be precluded from following the Federal Act across former barriers of 46 U.S.C. 183? Should the Limited Liability Act continue to defeat one whose property has been damaged or destroyed through no fault of his own by barring the State from providing a remedy? Can the State Act be attacked on ground that it conflicts with the Limited Liability Act when the effect of that provision in this context is to deny an injured property-owner due process of law by shielding owners and operators from any possibility of meaningful recovery?

CONCLUSION

Appellants respectfully submit that these questions are substantial and significant to continually developing state-federal relationships, and in the framework of today's concern over problems of environmental deterioration, and that this Court should note probable jurisdiction.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General



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PROOF OF SERVICE

I, Daniel S. Dearing, hereby certify that on the 22nd day of February, 1972, I served copies of the foregoing Jurisdictional Statement on the several parties hereto as follows:

On Plaintiffs THE AMERICAN WATERWAYS OPERATORS, INC.; GULF ATLANTIC TOWING CORPORATION; GLIDDEN-DURKEE; DIXIE CARRIERS, INC.; OIL TRANSPORT COMPANY, INC.; NATIONAL MARINE SERVICE, INC.; THE REVILO CORPORATION; EASTERN SEABOARD PETROLEUM COMPANY, INC.; STEUART TRANSPORTATION COMPANY; INTERSTATE OIL TRANSPORT COMPANY; FEDERAL BARGE LINES, INC., by mailing two copies to Ervin, Pennington,

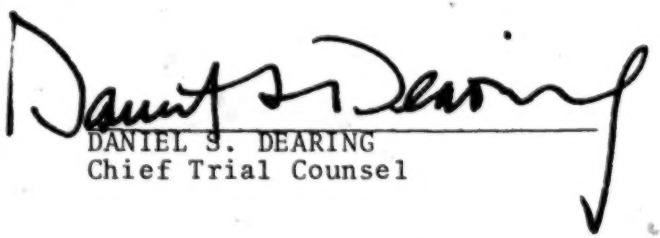
Varn & Jacobs, Attorneys for Original Plaintiffs, P. O. Box 1170, Tallahassee, Florida 32302;

and

On Intervening Plaintiffs SUWANNEE STEAMSHIP CO. and COMMODORES POINT TERMINAL CORPORATION by mailing two copies to KURZ, TOOLE, TAYLOR, MOSELEY & GABEL, Attorneys for the above-named Intervening Plaintiffs, Suite 1014 Barnett Bank Building, 112 West Adam Street, Jacksonville, Florida 32202; and

On Intervening Plaintiffs AMERICAN INSTITUTE OF MERCHANT SHIPPING; ASSURANCE FORENINGEN GARD; ASSURANCE FORENINGEN SKULD; THE BRITANNIA STEAM SHIP INSURANCE ASSOCIATION, LIMITED; THE JAPAN SHIP OWNERS MUTUAL PROTECTING AND INDEMNITY ASSOCIATION LIMITED; THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION, LIMITED; NEWCASTLE PROTECTION AND INDEMNITY ASSOCIATION; THE NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCIATION, LIMITED; THE STANDARD STEAMSHIP OWNERS' PROTECTION & INDEMNITY ASSOCIATION; THE STANDARD STEAMSHIP OWNERS' PROTECTION AND INDEMNITY ASSOCIATION (BERMUDA), LIMITED; THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION, LIMITED; SUNDERLAND STEAMSHIP PROTECTING AND INDEMNITY ASSOCIATION: SVERIGES ANGFARTYGS ASSURANSFORENING; THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA), LIMITED; THE WEST OF ENGLAND SHIP OWNERS MUTUAL PROTECTION AND

INDEMNITY ASSOCIATION (LUXEMBOURG); and their respective members, by mailing two copies to them c/o Fowler, White, Gillen, Humkey, Kinney & Boggs, P. O. Box 1438, Tampa, Florida 33601; Haight, Gardner, Poor & Havens, 80 Broad Street, New York, New York 10004; and Healy & Baillie, 29 Broadway, New York, New York 10006, Attorneys for the above-named Intervening Plaintiffs.



DANIEL S. DEARING
Chief Trial Counsel

APPENDIX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 71-156-Civ-J

THE AMERICAN WATERWAYS OPERATIONS, INC., et al.,

Plaintiffs

and

SUWANNEE STEAMSHIP CO., et al.,

Intervening Plaintiffs,

vs.

REUBIN O'D. ASKEW, et al.

Defendants

MEMORANDUM OPINION
AND FINAL JUDGMENT

Before, RONEY, Circuit Judge, and SCOTT and TJOFLAT, District Judges.

TJOFLAT, District Judge:

During the 1970 session the Florida Legislature passed the "Oil Spill Prevention and Pollution Act"[1] (hereinafter called the "Florida Act") in an attempt to prevent pollution by the shipping industry of waters within the territorial jurisdiction of the State of Florida. The Act imposes unlimited liability without fault upon virtually any vessel which discharges oil or any other pollutant while destined for or leaving any Florida port.[2] Onshore and offshore terminal facilities are subject to the same liability.[3] The Act requires every owner or operator of a vessel using a Florida port or a terminal facility to pay whatever clean up costs or damages may result from the discharge of pollutants[4] and to maintain satisfactory evidence of financial responsibility to satisfy such liability.[5] The Department of Natural Resources is empowered to require any vessel transporting a pollutant in state waters to be equipped with specified containment gear and a crew trained in its use.[6] Prior to entering a Florida port, every vessel is subject to inspection by the port manager to determine the presence of the required contain-

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ment gear and the seaworthiness of the ship.[7] He is required to notify all other ports in the state of any vessel refused entry to his port.[8]

Plaintiffs and intervenors include merchant shippers whose vessels use Florida ports in the course of transporting goods in foreign and interstate commerce; world shipping associations who insure three-fourths of the ocean-going tonnage against, among other things, liability for oil spillage; a substantial portion of the barge and towing industry operating along the Florida coast; and owners of oil terminal facilities located in Florida ports. They have challenged the validity of the Florida Act on several federal constitutional grounds. Plaintiffs' initial contention is that Florida has sought to legislate substantive maritime law which, under the United States Constitution, is exclusively within the federal domain. Secondly, they contend that the Act violates the Commerce Clause, since it seeks to regulate foreign and interstate commerce. Certain provisions of the Act are under piecemeal attack on Fourteenth Amendment due process and equal protection grounds. The resolution of the first of these contentions dictates the decision in this case, and the others will not be discussed.

The maritime law of the United States has evolved under Article 3, Section 2, of the Constitution which extends the judicial power of the United States "to all Cases of admiralty and maritime jurisdiction." In a territorial sense that jurisdiction covers all waters navigable in interstate or foreign commerce, including state waters.[9] Maritime law governs virtually every facet of the shipping industry from the design and construction of vessels to the regulation of their day to day operations and the transactions in which they engage. It comprises traditional admiralty rules and concepts found initially in the European authorities. These rules and concepts have been augmented from time to time by the federal judiciary to accommodate needs distinctive to this nation. Further changes in the corpus of maritime law have been effected by a variety of congressional enactments and administrative regulations.[10] One of these congressional enactments is the Water Quality Improvement Act of 1970[11] (hereinafter called "W.Q.I.A.") which became law a few months prior to the effective date of the Florida Act. W.Q.I.A. provides plaintiffs with tangible evidence that the Florida Act is an unconstitutional intrusion into the federal maritime domain.

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The W.Q.I.A. reinforces the national ant-water pollution policy. In this act Congress declared that there should be no discharge of oil into or upon the navigable waters and shorelines of the United States. The owner or operator of a vessel or an onshore or offshore facility is subject to limited liability without fault for the costs expended by the government in cleaning up an oil spill.[13] Where the spillage results from willful negligence or misconduct, however, liability for such costs can be unlimited.[14] Evidence of financial responsibility sufficient to cover its potential liability must be given by any vessel of 300 gross tons or more that uses the navigable waters of the United States.[15] Additionally, the President is authorized to issue regulations requiring, among other things, that vessels maintain oil spill prevention equipment and be subject to boarding for inspection purposes at any time.[16]

In adopting W.Q.I.A. Congress anticipated that all hazardous substances, in addition to oil, capable of polluting navigable waters would be subject to similar legislative treatment.[17] W.Q.I.A. required the President to promulgate regulations defining such hazardous substances and establishing methods and means for their removal.[18] He was also required to report to Congress, by

November 1, 1970, on the desirability of enacting legislation to establish liability for the cost of removing hazardous substances discharged from vessels and onshore and offshore facilities.[19]

That the Florida Act constitutes unlawful intrusion into the exclusive federal admiralty domain is apparent when one observes the extent to which that act would change substantive maritime law. The most obvious changes would be in the liability now imposed by W.Q.I.A. and maritime rules on shippers and the operators of onshore and offshore facilities.

While both W.Q.I.A. and the Florida Act subject vessels and onshore and offshore facilities to strict liability for cleanup costs, the latter imposes a far greater measure of responsibility. For example, W.Q.I.A. would excuse a shipper who demonstrates that the oil spill was caused by act of God, an act of war, or the act or omission of a third party.[20] The Florida Act recognizes none of these defenses to a claim by the state for cleanup costs. The state is entitled to judgment simply by pleading and proving "the fact of the prohibited discharge."[21] Moreover, the amount of the recovery would be unlimited; whereas W.Q.I.A.

would place a limit on exposure, as we have previously noted.[22]

There is perhaps an even greater contrast between maritime law and the Florida Act in compensating state or private interests for property damage, as distinguished from cleanup costs. W.Q.I.A. creates responsibility for cleanup costs only and leaves undisturbed the remedies available under maritime law for private injury caused by oil spillage or other pollution. The federal courts have long considered oil pollution as a maritime tort for which damages may be awarded.[23] Compensation is recoverable for injury to property and allowances have even been made for consequential damages. In In re New Jersey Barging Corp.,[24] an oil spill case, the court approved the following language from the Commissioner's report:

> In the light of the ... authorities, it would seem to the Commissioner that he is authorized, and in fact required, to make award of compensation for such annoyance, inconvenience and discomfort suffered by particular claimants to the extent of and in an amount commensurate with the annoyance and discomfort proven.

The recovery of damages in such cases is predicated on proof of negligence or unseaworthiness. The owner of a seaworthy vessel would not be liable, for example, if he encountered an extraordinary peril which resulted in a non-deliberate and non-negligent pollution of the shoreline. Even if fault was established, the vessel owner's financial responsibility for property damage would be limited to the value of the vessel at the end of the voyage, plus the "freight then pending," unless the damage was caused with the owner's "privity or knowledge."[25]

Under the Florida Act, however, liability without fault is the foundation for "damage insurred by the state and for damage resulting from injury to others," just as it is in the case of cleanup costs. By substituting absolute liability for proof of negligence or unseaworthiness as a condition to unlimited recovery, the Florida Act, if valid, would materially change the substantive maritime law governing the disposition of claims arising from the pollution of coastal waters.

It is well settled that state legislation is invalid where it is in contravention with general admiralty rules or congressional enactments in

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the maritime field. In the landmark Jensen case,[26] the Supreme Court, in holding that the New York State Workmen's Compensation Statute could not constitutionally be applied where an accidental death occurred on a vessel afloat in navigable waters within New York's boundaries, said:

> And plainly, we think, no such legislation is valid if it contravenes the essential purpose expressed by act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which such law was incorporated into our national laws by the Constitution itself.[27]
>
> * * *
>
> If New York can subject foreign ships coming into her ports to such obligations as those imposed by her Compensation Statute, other States may do likewise. The necessary consequence would be destruction of the very uniformity in respect to maritime matters which the Constitu-

> tion was designed to establish; and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded. . . . The legislature exceeded its authority in attempting to extend the statute under consideration to conditions like those here disclosed. So applied, it conflicts with the Constitution and to that extent is invalid.[28]

The Florida Act here constitutes a far greater intrusion into the federal maritime domain than the New York statute in the Jensen case. If applied to the plaintiffs and intervenors in this case, the Florida Act would effect-- in the words of Jensen-- the "destriction of the very uniformity in respect to maritime matters which the Constitution was designed to establish; and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded."

This is not a situation in which a state legislature has sought to act in an area of purely local concern and its enactment is no real encroachment on federal interests. Rather, this is a case where the State purports to impose upon shipping and related industries duties which under the federal law they do not bear. It can hardly be said that Florida is not seeking to regulate conduct in the federal maritime jurisdiction. We

need not belabor the point that to permit the states severally to regulate these industries as Florida seeks to do would sound the death knell to the principle of uniformity.

Defendants argue that, to the extent the Florida Act goes beyond W.Q.I.A., it fill (sic) a "void" in the maritime law and is justifiable under the "gap theory."[29] This theory presupposes that maritime law is an incomplete system, with numerous gaps that can be filled by state statutes. This is to say, if the maritime law affords no remedy, the states may provide one. The Supreme Court's recent decision in Moragne v. States Marine Lines,Inc.[30] clearly puts such a theory to rest.

In that case the Court had before it the question of the applicability of the Florida Wrongful Death Statute[31] to a claim arising out of the death of a longshoreman killed while working aboard a vessel in navigable waters within the State of Florida. Neither the general maritime law nor Congressional enactment provided a remedy in the situation. The District Court and the Court of Appeals, citing The Tungus v. Skovgaard,[32] held that the state statute should be invoked to provide the remedy as well as the basis for recovery, that is, negligence.

Under maritime law, however, States Marine Lines owed plaintiff's decedent the duty to provide a seaworthy vessel in addition to the duty to exercise due care. Plaintiff therefore argued that an action was maintainable for a breach of either duty.

The Supreme Court rejected the notion that the absence of a federal statute or a maritime rule on the subject compelled the conclusion that state law must govern. It held that admiralty was fully capable of fashioning a remedy for the breach of substantive duties imposed by general maritime law and thus directed the district court to shape the remedy on remand. At the same time the Court observed that the Florida law of negligence has no place in the maritime field. The decision clearly reinforced the policy of uniformity and is an indication that admiralty cannot tolerate the inconsistency inherent in accommodating state remedial statutes to exclusively maritime substantive concepts.

Another argument advanced by defendants is that the Florida Act is valid under the following provision of W.Q.I.A.:

> Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to

> the discharge of oil into any waters within such State. 33 U.S.C. §1161(o) (2).

It has long been recognized that Congress is powerless to confer on the states authority to legislate within the admiralty jurisdiction [Knickerbocker Ice Company v. Stewart, 253 U.S. 149 (1920);[33] The Lottawanna, 21 Wall. 558 (1875); The Steamer St. Lawrence, 1 Bl. 522 (1862)] and we cannot presume that W.Q.I.A. was an attempt to do so. There is nothing in the language of the act which purports to grant any such legislative authority to the states. The statement that Congress did not intend to preclude state imposed liability for oil pollution simply means that the states are free to enforce pollution control measures that are within their constitutional prerogative.

For the foregoing reasons we conclude that the Florida Act in question cannot constitutionally be applied to the plaintiffs and intervenors and to the activities in which they engage. The question thus arises as to whether the Act is severable. Although it contains a severability clause,[34] such a provision is by no means binding on a court empowered to determine the constitutionality of a statute. The rule was explained by the Supreme

Court in Carter v. Carter Coal Co.:

> Whether the provisions of a statute are so interwoven that one being held invalid the others must fall, presents a question of a statutory construction and of legislative intent, to the determination of which the statutory provision becomes an aid. "But it is an aid merely; not an inexorable command." Dorchy v. Kansas, 264 U.S. 286, 290. The presumption in favor separability does not authorize the Court to give the statute "an effect altogether different from that sought by the measure viewed as a whole." Railroad Retirement Bd. v. Alton R. Co., 295 U.S. 330, 362.
>
> The statutory aid to construction in no way alters the rule that in order to hold one part of a statute unconstitutional and uphold another part as separable, they must not be mutually dependent upon one another.

When a federal court is called upon to rule on the constitutionality of a state statute containing a severability clause, the court will look to the decisions of the state court on the effect of such a clause.[36] In Cramp v. Board of Public Instruction[37] the Supreme Court of Florida made the

following pronouncement on the question of severability:

> The rule is well established that the unconstitutionality of a portion of a statute will not necessarily condemn the entire act. When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.[38]

In the Florida Act there are no provisions which, though standing by themselves might be considered unobjectionable, are not so interwoven in purpose and scheme with the invalid provisions of the Act as to permit the operation of the severability clause. The announced intent of the Florida Legislature was to "deal with the hazards and threats of danger and damage posed by . . . . transfer of pollutants between vessels, between onshore facilities and vessels,

and between offshore facilities and vessels within the jurisdiction of the state and state waters. . . . "[39] Each provision of this statute was enacted to realize this intent and each would affect the industries in which plaintiffs and intervenors engage. The provisions that do not directly frustrate the federal maritime law are so few that, considered together, they would not comprise a coherent legislative scheme. Accordingly, the Act in its entirety must fall.

In consideration of the foregoing, it is

ORDERED:

1. Chapter 70-244, Laws of Florida, as amended in Chapter 376, Florida Statutes Annotated, is hereby declared to be in violation of Article III, Section 2, Clause 3 of the Constitution of the United States and is therefore null and void and without effect.

2. The temporary restraining order entered by Judge Charles R. Scott on March 19, 1971, enjoining the enforcement of said chapter and any regulations promulgated thereunder is hereby made permanent; provided that nothing in this final judgment shall be construed to prohibit the defendants from continuing to pay salaries of current employees out of the Coastal Protection Trust Fund.

3. This memorandum opinion and final judgment shall constitute the final judgment of this Court as to all issues presented in this action.

DONE AND ORDERED at Jacksonville, Florida, this 10th day of December, 1971.

s/ Gerald Bard Tjoflat
UNITED STATES DISTRICT JUDGE

FOR THE COURT

FOOTNOTES

1. Chapter 376, Florida Statutes Annotated; Chapter 70-244, Laws of Florida (all further citations to the act will be to Florida Statutes Annotated).

2. Sections 376.12, Florida Statutes Annotated, provides in part:

> Liabilities of licensees.--Because it is the intent of this chapter to provide the means for rapid and effective cleanup and to minimize damages, any licensee and its agents or servants, including vessels destined for or leaving a licensee's terminal facility, who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the state for all costs of cleanup or other damage incurred by the state and for damages resulting from injury to others. In any suit to enforce claims of the state under this chapter, it shall not be necessary for the state to plead or prove negligence in any form or manner on the part of the licensee or any vessel. If the state is damaged by a discharge prohibited by this chapter it need only plead and prove the fact of the prohibited

discharge or other polluting condition and that it occurred. "'Pollutants' shall include, but not be limited to, oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and other hazardous materials." Fla. Stat. Ann. §376.031(7).

3. Terminal facilities and vessels are defined as:

> "Terminal facility" means any water front facility of any kind, other than vessels not owned or operated by such facility, and related appurtenances located on land, including submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing, or refining oil or other pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. A vessel shall be considered a terminal facility only in the event of a ship-to-ship transfer of oil, petroleum products or their by-products, and other pollutants, and only that vessel going to or coming from the place of transfer and

> the terminal facility. With respect solely to application fees for licenses and annual license fees as required in this act, the words "terminal facility" shall not be construed to include the fuel storage tanks or other facilities of any marine service station having no more than twelve hundred (1200) gallons of pollutants in storage on the premises. Fla. Stat. Ann. §376.031(9) as ammended, Laws of Florida, 71-243.
>
> "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs. Fla. Stat. Ann. §376.031(12).

4. See note 2, supra.

5. Section 376.14, Florida Statutes Annotated, provides, in part:

> (1) Each owner or operator of a terminal facility or vessel, including any barge, using any port in Florida shall establish and maintain under rules and regulations prescribed by the department of natural resources, evidence of financial responsibility based on the capacity of the terminal facility or tonnage

of the ship, the cargo carried, and other similar factors to which the vessel could be subjected under this chapter. Financial responsibility may be established and maintained by any one (1), or a combination, of the following methods acceptable to the department:

(a) Evidence of insurance;

(b) Surety bonds payable to the governor of the state, conditioned to pay all costs and expenses of the cleanup of any discharge as well as damages caused to the state and any person;

(c) Qualification as a self-insurer; or

(d) Other evidence of financial responsibility satisfactory to the department.

(2) A bond filed with the department shall be issued by a bonding company authorized to do business in the state.

(3) Any claim for costs incurred by a terminal facility or vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility. Any claim for costs of cleanup, civil penalties, or damages by the state, and any claim for damages by any injured person, may be brought directly against the bond, the insurer, or any other person providing evidence

of financial responsibility.

6. Section 376.07, Florida Statutes Annotated, provides in part:

> Regulatory powers of department.--The department shall from time to time adopt, amend, repeal, and enforce reasonable regulations insofar as they relate to oil spills or discharges or the spills or discharges of other pollutants into the waters of this state or onto the coasts of this state.
>
> (1) The regulations shall be adopted in accordance with the administrative procedure act, chapter 120.
>
> (2) The department shall adopt regulations including, but not limited to, the following matters:
>
> (a) Operation and inspection requirements for facilities, vessels, personnel, and other matters relating to licensee operations under this chapter, and specifically requiring that vessels transporting pollutants within state waters shall maintain on board such containment gear as may be required by the department with a crew trained in the use of the gear.
>
> (b) Procedures and methods of reporting discharges and other occurrences prohibited

by this chapter.

(c) Procedures, methods, means, and equipment to be used by persons subject to regulation by this chapter in the removal of pollutants.

* * *

(f) Requirements for minimum weather and sea conditions for permitting a vessel to enter port and for the safety and operation of vessels, barges tugs, motor vehicles, motorized equipment, and other equipment relating to the use and operation of terminals, facilities, and refineries, the approach and departure from terminals, facilities, and refineries and requirements that containment gear approved by the department be on hand and maintained by terminal facilities and refineries with adequate personnel trained in its use.

(g) Requirements that, prior to being granted entry into any port in this state, the master of a vessel shall report:

(1) Any discharges of oil or other pollutants the vessel has had since leaving the last port;

(2) Any mechanical problem on the vessel which creates the possibility of a spill; and

(3) Any denial of entry

into any port during the current cruise of the vessel.

7. Section 376.08(2), Florida Statutes Annotated, provided:

> The port manager shall have the authority to board any vessel prior to its entry into port in order to ascertain the seaworthiness of the vessel and the presence of required containment gear. Upon being notified of a discharge the port manager shall have authority to direct the vessel to anchor immediately or move to a specific dock and deploy containment gear or to move to the open seas and to take such other measures as he deems necessary. The port manager shall have the additional duty to inspect any terminal facility in his port to determine that adequate containment gear is on hand at the terminal facility.

8. Section 376.08(3), Florida Statutes Annotated, provides:

> A port manager who refuses entry of any vessel into the port under his charge shall be required to notify all other ports in the state of his refusal of entry of that vessel.

9. "[T]he admiralty jurisdiction of the United States extends

> to all waters, salt or fresh, with or without tides, natural or artificial, which are in fact navigable in interstate or foreign water commerce, whether or not the particular body of water is wholly within a state, and whether or not the occurrence or transaction that is the subject matter of the suit is confined to one state." Gilmore and Black, The Law of Admiralty, §1-11, at 28-29 (1957) and cases cited therein.

Arguably, this would include land-locked lakes which are "navigable-in-fact" in interstate commerce.

10. The "Necessary and Proper Clause" of the United States Constitution (Article I, Section 8, Clause 18), read in context with the "Admiralty Clause" (Article III, Section 2, Clause 3) confers upon Congress the power to enact legislation in the maritime field. Knickerbocker Ice Company v. Stewart, 253 U.S. 149 (1920); Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917).

11. 33 U.S.C. §1161 et seq.

12. 33 U.S.C. §1161(b)(1).

13. The amount of liability of a vessel is limited to $100 per gross ton or $14,000,000, which is less. The liability of an onshore or offshore facility is limited to $8,000,000. 33 U.S.C. §1161(f)(1), (2) and (3).

14. 33 U.S.C. §1161(f)(1), (2) and (3).

15. 33 U.S.C. §1161(p).

16. 33 U.S.C. §1161(j).

17. 33 U.S.C. §1162.

18. Id.

19. Id.

20. 33 U.S.C. §1161(f).

21. See note 2, supra. Section 376.11 establishes the Florida Coastal Protection Fund. One of the purposes of the fund is to provide moneys to be used by the Department of Natural Resources in cleaning up oil spills. The state's recovery of cleanup costs--by simply pleading and providing the fact of a discharge under Section 376.12--provides revenue for the fund. If the party causing the oil spill wants to contend that the discharge was caused by an act of God, for example, he must petition the department after he has been held liable for the cleanup costs. If the Department, in the exercise of its discretion, concludes that the contention is well made, it may waive the State's right to reimbursement of the cleanup cost. Whether the petition is granted or not is a matter solely for the Department to decide, for its decision on the merits is not subject to judicial review, as Section 376.11(6)(b) provides:

> "The findings of the department as it is the legislative intent

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> that the waiver provided in this paragraph is a privilege conferred, not a right granted."

22. See notes 2 & 13 supra and accompanying text. The potential for conflict is equally present between the regulatory scheme envisioned by the Florida Act and present regulation under federal acts. Pursuant to the W.Q.I.A. the President was required to publish a National Contingency Plan to remove oil spills and to minimize damage and to promulgate regulations "consistent with maritime safety and with marine and navigation laws." 33 U.S.C. §1161(c),(j). These regulations are to cover, for example, the establishment of

> "procedures, methods, and requirements for equipment to prevent discharges of oil from vessels and from onshore facilities and offshore facilities and . . . governing the inspection of vessels carrying cargoes in order to reduce the likelihood of discharges of oil from such vessels. . . ." 33 U.S.C. §1161(j).

The Florida Act obligates the Department of Natural Resources to act in the same areas. See note 6 supra. The potential for conflict in these two regulatory schemes is obvious.

It is likely that regulations promulgated under the Florida Act would further be discordant with the Steamboat Inspection Act, Title 46, U.S.C. §361 et seq., and regulations promulgated there-

under. Section 376.08(2), Florida Statutes Annotated, provides that

> "[t]he port manager shall have authority to board any vessel prior to its entry into port in order to ascertain the seaworthiness of the vessel and the presence of the required containment gear."

At the same time the Steamboat Inspection Act, together with the regulations issued pursuant thereto, sets up a detailed and comprehensive scheme, administered by the United States Coast Guard, for maintenance, inspection, and regulation of all vessels (except motor boats, which are otherwise provided for) propelled in whole or in part by mechanical or electrical power in the navigable waters of the United States. 46 U.S.C. §§361-62. The Federal scheme is in consonance with the International Convention for the Safety of Life at Sea, 1960, T.I.A.S., 16 U.S.T. 185, 536 U.N.T.S. 27, which has been ratified or adhered to by all maritime nations, including the United States. Here again, conflict between the regulations under the Florida Act and the federal law appears unavoidable.

23. See, e.g., Fireman's Fund Ins. Co. v. Standard Oil Co., 339 F.2d 148 (9th Cir. 1964); Salaky v. Atlas Barge No. 3, 208 F. 2d 174 (2nd Cir. 1953); California v. The Bournemouth, 307 F.Supp. 922 (C.D.Cal. 1969); Petition of New Jersey Barging Corp., 168 F.Supp. 925 (S.D.N.Y. 1958). Since the Congressional enactment of the Admiralty Extension Act in 1948 (46 U.S.C.

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§740) "all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land" (emphasis added) are considered maritime torts and thus within the admiralty jurisdiction. Petition of New Jersey Barging Corp., supra.

24. 168 F.Supp. 925, 937 (S.D.N.Y. 1958).

25. United States Limited Liability Act, 46 U.S.C. §183 et seq. No state statute can override this "Limitation Statute" within the territorial jurisdiction of the federal maritime law. In Butler v. Boston & Savannah Steamship Co., 130 U.S. 527, 555 (1889), the Supreme Court observed:

> "The law of limited liability, as we have frequently had occasion to assert, was enacted by Congress as a part of the maritime law of this country, and therefore it is co-extensive, in its operation, with the whole territorial domain of that law."

In holding that a Massachusetts wrongful death action, arising from a death occurring in the admiralty jurisdiction, was subject to the "Limitation Statute", the Court went on to say:

> "It is unnecessary to consider the force and effect of the statute of Massachusetts over the place in question. Whatever force it may have in creating liabilities for acts done there, it cannot neutralize

> or affect the admiralty or maritime jurisdiction or the operation of the maritime law in maritime cases. Those are matters of national interest. If the territory of the state technically extends a marine league beyond the seashore, that circumstance cannot circumscribe or abridge the law of the sea." 130 U.S. at 557-58.

26. Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917).

27. Id. at 216.

28. Id. at 217-18.

29. See, Currie, "Federalism and the Admiralty," The Supreme Court Review 1960, 158 at 166-73.

30. 398 U.S. 375 (1970).

31. Fla. Stat. Ann. §768.01.

32. 358 U.S. 588 (1959).

33. In the Knickerbocker case the Court, speaking to the question of state legislative authority in the maritime field, said:

> "The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other

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> matters within the admiralty and maritime jurisdiction. Moreover, it took from the States all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations." 253 U.S. at 160-61. (Emphasis added).

34. Laws of Florida, 70-244 §23.

35. 298 U.S. 238, 313 (1936).

36. Watson v. Buck, 313 U.S. 387 (1941).

37. 137 So.2d 828 (Fla. 1962).

38. Id. at 830.

39. Fla. Stat. Ann. §376.021(3)(a), (4)(a).

AIR AND WATER POLLUTION CONTROL

CHAPTER 70-244

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 450

An Act relating to pollutants; providing definitions; prohibiting such pollution; providing for authority in the department of natural resources to act in preventing and controlling oil spills and other pollution; authorizing the department to provide employees and equipment in ports and other places; providing for recovery of cost in controlling and cleaning pollution; providing for licenses for terminal facilities, and for fees and exceptions; creating Florida costal protection fund; providing for strict liability; providing for criminal and civil penalties; providing for the removal of derelict vessels by the state; providing for cooperation and coordination of all state agencies; authorizing the department of natural resources to require by rules and regulations that terminal facilities and vessels establish and maintain evidence of financial responsibility to reimburse the state and private citizens for damages caused by discharges of pollutants; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title

This act shall be known as "the oil spill prevention and pollution control act."

Section 2. Legislative intent

(1) The legislature finds and declares that the highest and best use of the seacoast of the state is as a source of public and private recreation.

(2) The legislature further finds and declares that the preservation of this use is a matter of the highest urgency and priority and that such use can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(3) The legislature further finds and declares that the transfer of pollutants between vessels, between onshore facilities and vessels and between offshore facilities and vessels within the jurisdiction of the state and state waters is a hazardous undertaking; that spills, discharges and escape of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the state; to owners and users of shorefront property; to public and private recreation; to citizens of the state and other interests deriving livelihood from marine related activities; and to the beauty of the Florida coast; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as herein set forth and that such state interests outweigh any economic burdens imposed by the legislature upon those engaged in transferring pollutants and related activities.

(4) The legislature intends by the enactment of this legislation to exercise the police power of the state through the department of natural resources by conferring upon said department power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; and to establish a fund to provide for the inspection and supervision of such

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activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

(5) The legislature further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the state in promoting its general welfare, preventing diseases, promoting health and providing for the public safety, and that the state's interest in such preservation outweighs any burdens of absolute liability imposed by the legislature upon those engaged in transferring pollutants and related activities.

(6) The legislature further declares that it is the intent of this act to support and complement applicable provisions of the federal water quality improvement act of 1970,[1] specifically those provisions relating to the national contingency plan for removal of oil and other pollutants.

[1] 33 U.S.C.A. § 1151 et seq.

Section 3. Definitions

When used in this act, unless the context clearly requires otherwise:

(1) "Department" means the department of natural resources.

(2) "Director" means the executive director of the department of natural resources.

(3) "Barrel" means forty-two (42) U. S. gallons at sixty degrees (60°) Fahrenheit.

(4) "Other measurements" means measurements set by the department for products transferred at terminals which are other than fluid or which are not commonly measured by the barrel.

(5) "Discharge" means any spilling, leaking, seeping, pouring, emitting, emptying, or dumping.

(6) "Fund" means the Florida coastal protection fund.

(7) "Pollutants" shall include but not be limited to oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and other hazardous materials.

(8) "Pollution" means the presence in the outdoor atmosphere or waters of the state of any one (1) or more substances or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(9) "Terminal facility" means any waterfront facility of any kind, other than vessels not owned or operated by such facility, and related appurtenances located on land, including submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing, or refining oil or other pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility, or a governmental or quasi-governmental body. A vessel shall be considered a terminal facility only in the event of a ship to ship transfer of oil, petroleum products, their by-products, and other pollutants, and only that vessel going to or coming from the place of transfer and the terminal facility.

(10) "Owner or operator" means any person owning or operating a terminal facility whether by lease, contract, or any other form of agreement.

(11) "Transferred" includes both onloading and offloading between terminal and vessel and vessel to vessel.

(12) "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs.

(13) "Port manager" means the manager or director of the port or his designee, to be approved by the department, to carry out the requirements of this act.

(14) "Person in charge" means the person on the scene who is in direct, responsible charge of a terminal facility or vessel from which oil or other pollutants are discharged when the discharge occurs.

(15) "Discharge cleanup organization" means any group, incorporated or unincorporated, of owners or operators of waterfront terminal facilities in any port or harbor of the state, and any other person who may elect to join, organized for the purpose of containing and cleaning up discharges of oil and other pollutants through cooperative efforts and shared equipment and facilities.

Section 4. Pollution and corruption of waters and lands of the state prohibited

The discharge of oil, petroleum products, their by-products, and other pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state is prohibited.

Section 5. Powers and duties of the department

(1) The powers and duties conferred by this act shall be exercised by the department of natural resources and shall be deemed to be an essential governmental function in the exercise of the police power of the state. The department of air and water pollution control is directed to cooperate with the department of natural resources and to offer consultative services, enforcement, prosecution, and technical advice to the department. The department may call upon any other state agency for consultative services and technical advice and the said agencies are directed to cooperate in said request.

(2) The powers and duties of the department under this act shall extend to the boundaries of the state described in article II, section 1 of the constitution of Florida.

(3) Licenses required under this act shall be issued from the department subject to such terms and conditions as are set forth in this act and as set forth in rules and regulations promulgated by the department as authorized herein.

(4) Whenever it becomes necessary for the state to protect the public interest under this act, it shall be the duty of the department of natural resources to keep an accurate record of costs and expenses incurred and thereafter diligently to pursue the recovery of any sums so incurred from the government of the United States under any applicable federal act.

Section 6. Operation without license prohibited

(1) No person shall operate or cause to be operated a terminal facility as defined in this act without a license.

(2) Licenses shall be issued on an annual basis and shall expire on December 31 annually, subject to such terms and conditions as the department may determine are necessary to carry out the purposes of this act.

(3) As a condition precedent to the issuance or renewal of a license the department shall require satisfactory evidence that the applicant has implemented or is in the process of implementing state and federal plans and regulations for control of pollution related to oil, petroleum products, their by-products and other pollutants and the abatement thereof when a discharge occurs.

(4) Licenses issued to any terminal facility shall include vessels used to transport oil, petroleum products, their by-products, and other pollutants between the facility and vessels within state waters.

(5) The director may require, in connection with the issuance of a terminal facility license, the payment of a reasonable fee for processing applications for registration certificates. Such fee shall be reasonably related to the administrative costs of verifying data submitted pursuant to obtaining such certificates and reasonable inspections; provided, however, such fee shall not exceed $250.00 per terminal facility per year.

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(6) Within three (3) months of the effective date of this act every owner or operator of a terminal facility shall obtain a license. The department shall issue a license upon the showing that the said registrant can provide all necessary equipment to prevent, contain and remove discharges of oil and other pollutants.

(7) On or after a date to be determined by the director, but in no case later than ninety (90) days after the effective date of this act, no person shall operate or cause to be operated any terminal facility without a terminal facility registration certificate issued by the director. No registration certificate shall be valid for more than one (1) year unless revalidated by the director. Each applicant for a terminal facility registration certificate shall pay the annual license fee and shall submit information, in a form satisfactory to the director, describing the following:

(a) The barrel or other measurement capacity of such terminal facility.

(b) All containment and removal equipment, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communication devices, to which such facility has access, whether through direct ownership, by contract, or by membership in an approved discharge cleanup organization.

(c) The terms of agreement and operation plan of any such discharge cleanup organization to which the owner or operator of such terminal facility belongs.

(8) Upon showing of satisfactory containment and cleanup capability under this section, and upon payment of any registration fee required by the director under this act and the license fee the applicant shall be issued a registration certificate covering such terminal facility and related appurtenances, including vessels as defined in this act.

Section 7. Regulatory powers of department

The department shall from time to time adopt, amend, repeal, and enforce reasonable regulations insofar as they relate to oil spills or discharges or the spills or discharges of other pollutants into the waters of this state, or onto the coasts of this state.

(1) Such regulations shall be adopted in accordance with the administrative procedure act, chapter 120, Florida Statutes.

(2) The department shall adopt regulations including but not limited to the following matters:

(a) Operating and inspection requirement for facilities, vessels, personnel and other matters relating to licensee operations under this act and specifically requiring that vessels transporting pollutants within state waters shall maintain on board such containment gear as may be required by the department with a crew trained in the use of such gear.

(b) Procedures and methods of reporting discharges and other occurrences prohibited by this act. Specifically, the pilot and the master of a vessel causing a discharge shall be required to immediately report the discharge to the port manager and to the nearest coast guard station. The port manager, on being notified of a discharge, shall immediately notify the response team of the department and the coast guard and shall keep them fully informed of the need for containment equipment and emergency action.

(c) The port manager shall have the authority to board any vessel prior to its entry into port in order to ascertain the seaworthiness of the vessel and the presence of required containment gear. Upon being notified of a discharge the port manager shall have authority to direct the vessel to immediately anchor or move to a specific dock and deploy containment gear or to move to the open seas and to take such other measures as he deems necessary. The port manager shall have the additional duty to inspect any terminal facility in his port to determine that adequate containment gear is on hand at the terminal facility.

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(d) Procedures, methods, means, and equipment to be used by persons subject to regulation by this act and to be used in the removal of pollutants.

(e) Development and implementation of criteria and plans to meet oil petroleum, and other pollution occurrences of various degrees and kinds.

(f) The establishment of eleven (11) regional control districts, one for each of the eleven (11) deep water ports of the state, with a response team in each district and the establishment of rules and regulations to meet the particular requirements of each such district. The department shall create a state response team which shall be responsible for creating and maintaining a contingence plan of response, organization, and equipment for handling emergency cleanup operations. The state plans shall include detailed emergency operating procedures for the state as a whole and for the eleven (11) regional control districts, and the team shall from time to time conduct practice alerts. These plans shall be filed with the governor, all coast guard stations in the state and with the head of each regional team. The contingency plan shall include all necessary information for the total containment and cleanup of pollution, including but not limited to an inventory of equipment and its location, a table of organization with the names, addresses, and telephone numbers of all persons responsible for implementing every phase of the plan, a list of available sources of supplies necessary for cleanup and a designation of priority zones within each region to determine the sequence and methods of cleanup. The state response team shall act independently of agencies of the federal government but is directed to cooperate with any federal cleanup operation.

(g) Requirements for minimum weather and sea conditions for permitting a vessel to enter port and for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment, and other equipment relating to the use and operation of terminals, facilities, and refineries, the approach and departure from terminals, facilities, and refineries, and shall require that containment gear approved by the department be on hand and maintained by terminal facilities, and refineries with adequate personnel trained in its use.

(h) Requirements that, prior to being granted entry into any port in this state, the master of a vessel shall report:

1. Any discharges of oil or other pollutants the vessel has had since leaving the last port.

2. Any mechanical problem on the vessel which creates the possibility of a spill.

3. Any denial of entry into any port during the current cruise of the vessel.

(i) A port manager who refuses entry of any vessel into the port under his charge shall be required to notify all other ports in the state of his refusal of entry of that vessel.

(j) Such other rules and regulations as the exigencies of any condition may require or such as may reasonably be necessary to carry out the intent of this act.

Section 8. Removal of prohibited discharges

(1) Any person discharging pollutants as prohibited by section 4 shall immediately undertake to remove such discharge to the department's satisfaction. Notwithstanding the above requirement the department may undertake the removal of such discharge and may contract and retain agents who shall operate under the direction of the department.

(2) Whenever oil or any other pollutant is discharged from any terminal facility or vessel in violation of section 4 of this act, the person in charge of such terminal facility or vessel shall promptly remove, or arrange for the removal of, such oil or other pollutant. If the person in charge fails so to act, the director may arrange for the removal of such pollutant; provided that, if such oil or other pollutant was discharged into or upon the navigable

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waters of the United States, the director shall act in accordance with the national contingency plan for removal of oil or other pollutant established pursuant to the federal water quality improvement act of 1970 and the costs of removal incurred by the director shall be paid in accordance with the applicable provisions of said law.

(3) In the event of discharge, the source of which is unknown, any local discharge cleanup organization shall, upon the request of the director or his designee, immediately contain and remove such discharge. No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the director or his designee, shall be construed as an admission of liability for such discharge.

(4) No person who voluntarily, or at the request of the director or his designee, renders assistance in containing or removing oil or other pollutants shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Nothing in this act shall affect in any way the right of any person who renders assistance in containing or removing oil or other pollutants to reimbursement for the costs of such containment or removal under the applicable provisions of the federal water quality improvement act of 1970[1] or any rights which said person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of such oil or other pollutants.

[1] 33 U.S.C.A. § 1151 et seq.

Section 9. Personnel and equipment

The department shall establish and maintain at such ports within the state, and other places as it shall determine, such employees and equipment, other than such equipment furnished by the licensee, as in its judgment may be necessary to carry out the provisions of this act. The department may employ and prescribe the duties of such employees, subject to the rules and regulations of the division of personnel and retirement of the department of administration. The salaries of such employees and the cost of such equipment shall be paid from the Florida coastal protection fund established by this act. The department shall periodically consult with other departments of the state and specifically with the department of air and water pollution control relative to procedures for the prevention of discharges of oil and other pollutants into the coastal waters of the state from off-shore drilling production facilities.

Section 10. Enforcement, penalties

Whoever violates any provisions of this act or any rule, regulation, or order of the department made hereunder shall be punished by a civil penalty of not more than fifty thousand dollars ($50,000) to be assessed by the department. Each day that any violation continues constitutes a separate offense. The provisions of this section shall not apply to any discharge immediately reported and completely removed by a licensee in accordance with the regulations and orders of the department.

Section 11. Florida coastal protection fund

(1) The Florida coastal protection fund is established to be used by the department as a non-lapsing revolving fund for carrying out the purposes of this act. The fund shall be limited to the sum of five million dollars ($5,000,000). To this fund shall be credited all license fees, penalties, and other fees and charges related to this act, including administrative expenses, and costs of removal of discharges of pollution.

(2) Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this act shall be deposited with the treasurer to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the Florida coastal protection fund.

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(3) Each registrant shall obtain from the department a license for each of the terminal facilities of the registrant in the state and shall pay therefor an annual license fee, the amount of which is to be determined by the department upon the basis of the total capacity of the terminal facility for oil and other pollutants, but in no event shall exceed five hundred dollars ($500.00). License fees for a part of a year shall be prorated.

(4) Whenever the balance in the fund has reached the limit provided under this act, and as long as it remains so, license fees shall be proportionately reduced to cover only administrative expenses.

(5) Moneys in the Florida coastal protection fund shall be disbursed for the following purposes and no others:

(a) Administrative expenses, personnel expenses and equipment costs of the department related to the enforcement of this act.

(b) All costs involved in the abatement of pollution related to the discharge of oil, petroleum products, their by-products and other pollutants covered by this act and the abatement of other potential pollution hazards as authorized herein.

(c) All costs and expenses of the cleanup and rehabilitation of water fowl and other wildlife, whether performed by the department or any other state or local agency.

(6) The department shall recover to the use of the fund from the person or persons causing the discharge jointly and severally all sums expended therefrom, including overdrafts, for the following purposes; provided that recoveries resulting from damage due to an oil pollution or other similar disaster shall be apportioned between the Florida coastal protection fund and the general revenue fund so as to repay the full costs to the general revenue fund of any sums disbursed therefrom as a result of such disaster:

(a) All costs and expenses expended under paragraphs (b) and (c) of subsection (5) of this act.

(b) Requests for reimbursement to the fund for the above costs if not paid within thirty (30) days of demand shall be turned over to the department of air and water pollution control which, in cooperation with the attorney general, shall undertake the collection.

(c) Upon petition of the person determined to be liable for reimbursement to the fund for abatement costs under subsection (6) the department may, after hearing, waive the right to reimbursement to the fund from such person if the department finds that the occurrence was the result of any of the following:

1. An act of war.

2. An act of government, either state, federal, or municipal.

3. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

4. An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

The findings of the department shall be conclusive as it is the legislative intent that waiver provided in this act is a privilege conferred, not a right granted.

Section 12. Liabilities of licensees

Because it is the intent of this act to provide the means for rapid and effective cleanup and to minimize damages, any licensee and its agents or servants including vessels destined for or leaving a licensee's terminal facility who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the state for all costs of cleanup or other damage incurred by the state and for damages resulting from injury to others. In any suit to enforce claims of the state under this

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act, it shall not be necessary for the state to plead or prove negligence in any form or manner on the part of the licensee or any vessel. If the state is damaged by a discharge prohibited by this act it need only plead and prove the fact of the prohibited discharge or other polluting condition and that it occurred. In addition to the civil penalty, the pilot and the master of any vessel or person in charge of any licensee's terminal facility who fail to give immediate notification of a discharge to the port manager and the nearest coast guard station shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not more than two (2) years or by a fine of not more than ten thousand dollars ($10,000). The department shall, by rules and regulations, require that the licensee designate a person at the terminal facility who shall be the person in charge of that facility for the purposes specified by this section.

Section 13. Emergency proclamation; governor's powers

(1) Whenever any disaster or catastrophe exists or appears imminent arising from the discharge of oil, petroleum products or their by-products, or any other pollutants, the governor shall by proclamation declare the fact and that an emergency exists in any or all sections of the state. If the governor is unavailable, the lieutenant governor shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the state. A copy of such proclamation shall be filed with the secretary of state.

(2) In performing his duties under this act, the governor is authorized and directed to cooperate with all departments and agencies of the federal government, with the offices and agencies of other states and foreign countries, and the political subdivisions thereof, and with private agencies in all matters pertaining to a disaster or catastrophe.

(3) In performing his duties under this act, the governor is further authorized and empowered:

(a) To make, amend and rescind the necessary orders, rules and regulations to carry out this act within the limits of the authority conferred upon him and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

(b) To delegate any authority vested in him under this act, and to provide for the subdelegation of any such authority.

(4) Whenever the governor is satisfied that an emergency no longer exists, he may terminate the proclamation by another proclamation affecting the sections of the state covered by the original proclamation, or any part thereof. Said proclamation shall be published in such newspapers of the state and posted in such places as the governor, or the person acting in that capacity, deems appropriate.

Section 14. Terminal facilities and vessels required to file bond

(1) Each owner or operator of a terminal facility or vessel, including any barge, using any port in Florida shall establish and maintain, under rules and regulations prescribed by the department of natural resources, evidence of financial responsibility based on the capacity of the terminal facility or tonnage of the ship, the cargo carried, and other similar factors to which the vessel could be subjected under this act. Financial responsibility may be established and maintained by any one (1) of, or a combination of the following methods acceptable to the department:

(a) Evidence of insurance,

(b) Surety bonds payable to the governor of the state conditioned to pay all costs and expenses of the cleanup of any discharge as well as damages caused to the state and any other person,

(c) Qualification as a self-insurer, or

(d) Other evidence of financial responsibility satisfactory to the department.

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(2) If a bond is filed with the department, then such bond shall be issued by a bonding company authorized to do business in the state.

(3) Any claim for costs incurred by such terminal facility or vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility. Any claim for costs of cleanup, civil penalties or damages by the state and any claim for damages by any injured person may be brought directly against the bond, the insurer, or against any other person providing evidence of financial responsibility.

(4) Each owner or operator of a terminal facility or a vessel subject to the provisions of this act shall designate a person in the state as his legal agent for service of process under this act and such designation shall be filed with the secretary of state. In the absence of such designation the secretary of state shall be the designated agent for purposes of service of process under this act.

Section 15. Derelict vessels

(1) It is unlawful for any person, firm or corporation to store or leave any vessel in a wrecked, junked or substantially dismantled condition or abandoned upon any public waters or at any port in this state without the consent of the agency having jurisdiction thereof, or docked at any private property without the consent of the owner of such private property.

(2) The department is hereby designated as the agency of the state authorized and empowered to remove any derelict vessel from public waters in any instance when the same obstructs or threatens to obstruct navigation or contributes to air or water pollution or in any other way constitutes a danger or potential danger to the environment. This section shall constitute the authority of the department for such removal, but is not intended to be in contravention of any applicable federal act. The attorney general shall be the representative of the department of natural resources in such actions.

Section 16. Enforcement and penalties

It shall be unlawful for any person to violate any provision of this act or any rule, regulation or order of the department made hereunder. Violation shall be punishable by a civil penalty up to fifty thousand dollars ($50,000) to be assessed by the department. Each day during any portion of which such violation occurs constitutes a separate offense. Penalties assessed herein for a discharge shall be the only penalties assessed by the state and the assessed person or persons shall be excused from paying any additional penalty for water pollution assessable under chapter 403, Florida Statutes, for the same occurrence. The penalty provisions of this act shall not apply to any discharge promptly reported and removed by a licensee in accordance with the rules, regulations and orders of the department.

Section 17. Reports to the legislature

The department shall include in its recommendations to each legislature specific recommendations relating to the operation of this act, specifically including a license fee formula to reflect individual licensee experience, and a fee schedule based upon volatility and toxicity of petroleum products, their by-products and other pollutants.

Section 18. Budget approval

The department shall submit to each legislature its budget recommendations for disbursements from the fund. Upon approval thereof, the comptroller shall authorize expenditures therefrom as approved by the department.

Section 19. County and municipal ordinances; powers limited

Nothing in this act shall be construed to deny any county or municipality by ordinance or by law from exercising police powers under any general or special act, and laws and ordinances promulgated in furtherance of the intent of this act to promote the general welfare, public health, and public safety shall be valid unless in direct conflict with the provisions of this act or any

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rule, regulations, or order of the department adopted under authority of this act; provided, however, that in order to avoid unnecessary duplication, no county, municipality, or other political subdivision of the state may adopt or establish a similar program of licensing and fees for the accomplishment of the purposes of this act.

Section 20.

Nothing in this act shall be deemed to apply to the storage or transportation of liquefied petroleum gas or atmosphere of the state to industrial effluents discharged into the waters and water pollution control pursuant to a permit issued by department of air

Section 21. Construction

This act, being necessary for the general welfare, the public health, and the public safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under this act and the federal water quality improvement act of 1970.[1]

[1] 33 U.S.C.A. § 1151 et seq.

Section 22.

There is hereby appropriated from the general revenue fund one hundred thousand dollars ($100,000) to be transferred and deposited in the trust fund created in section 11 of this act. When the trust fund exceeds one million dollars ($1,000,000), then the total sum transferred originally from the general revenue fund shall be returned to the general revenue fund.

Section 23.

The provisions of this act are severable, and it is the intention to confer the whole or any part of the powers provided herein, and if any of the provisions of this act shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section 24. This act shall take effect July 1, 1970.

Approved by the Governor June 30, 1970.

Filed in Office Secretary of State June 30, 1970.

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STATE OF FLORIDA
DEPARTMENT OF NATURAL RESOURCES
Division of Marine Resources

CHAPTER 16B-16.08

Chapter 70-244 - Oil Spill Bill
Financial Responsibility - Vessels

16B-16.08

(1) No vessel or barge, carrying oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, or other hazardous materials as cargo, shall use any port in Florida on or after March 1, 1961, for any purpose unless a certificate of financial responsibility has been issued by the Department covering such vessel or barge.

(2) Either owners or operators of vessels or barges subject to Chapter 70-244, Laws of Florida, must establish and maintain with the Department evidence of financial responsibility in an amount not to exceed $100 per gross ton of such vessel or $5,000,000 whichever is lesser. Provided, however, that if an applicant is the owner of more than one vessel or barge subject to this rule, financial responsibility to which the largest vessel or barge could be subjected hereunder. Nothing herein shall be construed to prohibit

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third parties from establishing evidence of financial responsibility for such owners or operators of vessels or barges.

(3) The financial responsibility herein required may be established and maintained by any one (1) of, or a combination of, the following methods acceptable to the Department:

(a) Evidence of insurance - conditioned to pay all costs and expenses of the cleanup of a any discharge as well as damages caused to the state and any other person.

(b) Surety bonds payable to the governor of the State conditioned to pay all costs and expenses of the cleanup of any discharge as well as damages caused to the state and any other person.

(c) Qualification as a self-insurer, or

(d) Other evidence of financial responsibility satisfactory to the Department.

(4) All applications, evidence, documents, and other statements required to be filed with the Department shall be in English, and any monetary terms shall be

expressed in terms of United States currency. Such evidence of financial responsibility shall be on forms furnished by the Department upon request of the applicant.

(5) Where evidence of financial responsibility has been established, a separate certificate covering each vessel shall be issued evidencing the Department's finding of adequate financial responsibility to meet the minimum requirements of this rule.

General Authority

Chapter 70-244(7)
General Laws of Florida

Law Implemented

Chapter 70-244(14)
General Laws of Florida

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No. 2, set out as a note under section 1151 of this title.

Functions of Secretary of Health, Education, and Welfare under subsections (c) (4) and (f) of this section were transferred to Secretary of the Interior by section 1(d) (2) of 1966 Reorg.Plan No. 2, set out as a note under section 1151 of this title.

Selection of Members of Hearing Boards. Secretary of the Interior to give the Secretary of Health, Education, and Welfare opportunity to select a member of each Hearing Board appointed pursuant to subsections (c) (4) and (f) of this section as modified by 1966 Reorg.Plan No. 2, see section 1(d) (3) of 1966 Reorg.Plan No. 2, set out as a note under section 1151 of this title.

Actions by Surgeon General Relating to Interstate Pollution. Section 5 of Act July 9, 1956, provided that: "In the case of any discharge or discharges causing or contributing to water pollution with respect to which the actions by the Surgeon General prescribed under paragraph (2) of section 2(d) of the Water Pollution Control Act [section 1153(d) (2) of this title], as in effect prior to the enactment of this Act [July 9, 1956], have already been completed prior to such enactment, the provisions of such section shall continue to be applicable; except that nothing in this section shall prevent action with respect to any such pollution under and in accordance with the provisions of the Water Pollution Control Act [this chapter], as amended by this Act [Act July 9, 1956]."

Legislative History. For legislative history and purpose of Act June 30, 1948, see 1948 U.S.Code Cong. Service, p. 2215. See, also, Act July 17, 1952, 1952 U.S.Code Cong. and Adm.News, p. 2312; Act July 9, 1956, 1956 U.S.Code Cong. and Adm.News, p. 3023; Pub.L. 87-88, 1961 U.S.Code Cong. and Adm.News, p. 2076; Pub.L. 89-234, 1965 U.S.Code Cong. and Adm.News, p. 3313; Pub.L. 89-753, 1966 U.S.Code Cong. and Adm.News, p. 3069; Pub.L. 91-224, 1970 U.S.Code Cong. and Adm.News, p. —.

Library References

Navigable Waters ⇐35. C.J.S. Navigable Waters § 11.

§ 1161. Control of pollution by oil—Definitions

(a) For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bare-boat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore fa-

cility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership.

(8) "remove" or "removal" refers to removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

Congressional declaration of policy; prohibition against discharge of oil; exceptions; rules and regulations; determination of harmful quantities of discharged oil; notification of United States of discharge of oil; penalties for failure to notify; procedure for imposition of civil penalties for knowingly discharging oil; withholding of clearance

(b) (1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

(2) The discharge of oil into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in harmful quantities as determined by the President under paragraph (3) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone, where permitted under article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

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(3) The President shall, by regulation, to be issued as soon as possible after April 3, 1970, determine for the purposes of this section, those quantities of oil the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches, except that in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threaten the fishery resources of the contiguous zone or threaten to pollute or contribute to the pollution of the territory or the territorial sea of the United States may be determined to be harmful.

(4) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil from such vessel or facility in violation of paragraph (2) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(5) Any owner or operator of any vessel, onshore facility, or offshore facility from which oil is knowingly discharged in violation of paragraph (2) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $10,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of Title 46, of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

National Contingency Plan for removal of discharged oil; provisions; revisions; compliance

(c) (1) Whenever any oil is discharged, into or upon the navigable waters of the United States, adjoining shorelines, or into or

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upon the waters of the contiguous zone, the President is authorized to act to remove or arrange for the removal of such oil at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after April 3, 1970, the President shall prepare and publish a National Contingency Plan for removal of oil pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil discharges, including containment, dispersal, and removal of oil, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil pollution control equipment and material, and a detailed oil pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil to the appropriate Federal agency;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil; and

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

The President may, from time to time, as he deems advisable, revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and actions to minimize damage from oil discharges shall, to the greatest

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extent possible, be in accordance with the National Contingency Plan

Marine disasters; creation of a substantial threat of a pollution hazard; removal or elimination of pollution hazard; removal or destruction of vessel; employment of personnel; expenses

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provision of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection shall be a cost incurred by the United States Government for the purposes of subsection (f) of this section in the removal of oil.

Action by United States attorney to abate actual or threatened discharge of oil from an onshore or offshore facility; jurisdiction; nature of relief

(e) In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

Liability of owner or operator of vessel, onshore facility, or offshore facility for discharge of oil; exceptions; amount of liability; procedure for recovery

(f) (1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil is discharged in violation of subsection (b) (2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil by the United States Government in an amount not to exceed $100 per

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gross ton of such vessel or $14,000,000, whichever is lesser, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil is discharged in violation of subsection (b) (2) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Secretary is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil in violation of subsection (b) (2) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil is discharged in violation of subsection (b) (2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the re-

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moval of such oil by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

Proof by owner or operator of vessel, onshore facility, or offshore facility of liability of third party for discharge of oil; exceptions to third party liability; amount of liability; procedure for recovery

(g) In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil is discharged in violation of subsection (b) (2) of this section proves that such discharge of oil was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil in violation of subsection (b) (2) of this section, the liability of such third party under this subsection shall not exceed $100 per gross ton of such vessel or $14,000,000, whichever is the lesser. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred, if such owner or operator were liable. If the United States can show that the discharge of oil in violation of subsection (b) (2) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

Preservation of rights of owner or operator of vessel, onshore facility, or offshore facility, or United States against any third party

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to

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gross ton of such vessel or $14,000,000, whichever is lesser, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil is discharged in violation of subsection (b) (2) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Secretary is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil in violation of subsection (b) (2) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil is discharged in violation of subsection (b) (2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the re-

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moval of such oil by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

Proof by owner or operator of vessel, onshore facility, or offshore facility of liability of third party for discharge of oil; exceptions to third party liability; amount of liability; procedure for recovery

(g) In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil is discharged in violation of subsection (b) (2) of this section proves that such discharge of oil was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil in violation of subsection (b) (2) of this section, the liability of such third party under this subsection shall not exceed $100 per gross ton of such vessel or $14,000,000, whichever is the lesser. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred, if such owner or operator were liable. If the United States can show that the discharge of oil in violation of subsection (b) (2) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

Preservation of rights of owner or operator of vessel, onshore facility, or offshore facility, or United States against any third party

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to

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such discharge, or (2) the United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil.

Removal by owner or operator of vessel, onshore facility, or offshore facility of discharged oil; suit against United States for recovery of reasonable cost of removal; applicability to Outer Continental Shelf Lands Act; payment of judgment

(i) (1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil is discharged in violation of subsection (b) (2) of this section acts to remove such oil in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the fund established pursuant to subsection (k) of this section.

Issuance of rules and regulations consistent with the National Contingency Plan; compliance; imposition of civil penalties for violations; amount

(j) (1) Consistent with the National Contingency Plan required by subsection (c) (2) of this section, as soon as practicable after April 3, 1970, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil, (B) establishing criteria for the development and implementation of local and regional oil removal contingency plans, (C) establishing procedures, methods, and requirements for equipment to prevent discharges of oil from vessels and from onshore facilities and offshore facilities, and (D) governing the inspection of vessels carrying cargoes of oil and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from such vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulation, shall be liable to a civil penalty of not more than $5,000 for each such violation. Each violation shall be a separate offense. The President may as-

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sess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

Authorization of appropriations

(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury not to exceed $35,000,000 to carry out the provisions of subsections (c), (i), and (*l*) of this section and section 1162 of this title. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

Administration of oil pollution control; delegation of authority by President; availability of appropriations; utilization of personnel, services, and facilities

(*l*) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section and section 1162 of this title. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

Enforcement of provisions

(m) Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

Jurisdiction and venue

(n) The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i) (1) of this section, arising under this section. In the case of Guam, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of

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American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

Existing liability for damages for oil discharge or removal not affected or modified; power of State or political subdivision thereof to impose requirements or liabilities for oil discharge not preempted; existing Federal, State, or local authority or law not affected or modified

(o) (1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly-owned or privately-owned property resulting from a discharge of any oil or from the removal of any such oil.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

Financial responsibility of vessels; amount; establishment; effective date; administration of provisions; claim for costs against insurer; study and report on need for financial responsibility of vessels, and onshore and offshore facilities

(p) (1) Any vessel over three hundred gross tons, including any barge of equivalent size, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of $100 per gross ton, or $14,000,000 whichever is the lesser to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective one year after April 3, 1970. The President shall delegate

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the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after April 3, 1970. Regulations necessary to implement this subsection shall be issued within six months after April 3, 1970.

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) The Secretary of Transportation, in consultation with the Secretaries of Interior, State, Commerce, and other interested Federal agencies, representatives of the merchant marine, oil companies, insurance companies, and other interested individuals and organizations, and taking into account the results of the application of paragraph (1) of this subsection, shall conduct a study of the need for and, to the extent determined necessary—

(A) other measures to provide financial responsibility and limitation of liability with respect to vessels using the navigable waters of the United States;

(B) measures to provide financial responsibility for all onshore and offshore facilities; and

(C) other measures for limitation of liability of such facilities;

for the cost of removing discharged oil and paying all damages resulting from the discharge of such oil. The Secretary of Transportation shall submit a report, together with any legislative recommendations, to Congress and the President by January 1, 1971.

June 30, 1948, c. 758, § 11, as added Apr. 3, 1970, Pub.L. 91–224, Title I, § 102, 84 Stat. 91.

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§ 1161. Control of pollution by oil

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Financial responsibility of vessels; amount; establishment; effective date; administration of provisions; claim for costs against insurer; study and report on need for financial responsibility of vessels, and onshore and offshore facilities

(p) (1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of $100 per gross ton, or $14,000,000 whichever is the lesser to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

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As amended Dec. 31, 1970, Pub.L. 91-611, Title I, § 120, 84 Stat. 1823.

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§ 183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: *Provided*, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title. R.S. § 4283; Aug. 29, 1935, c. 804, § 1, 49 Stat. 960; June 5, 1936, c. 521, § 1, 49 Stat. 1479.

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ARTICLE III
UNITED STATES CONSTITUTION

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more States; between a State and citizens of another State;--between citizens of different States;--between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

AMENDMENT IX.
UNITED STATES CONSTITUTION

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

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AMENDMENT X
UNITED STATES CONSTITUTION

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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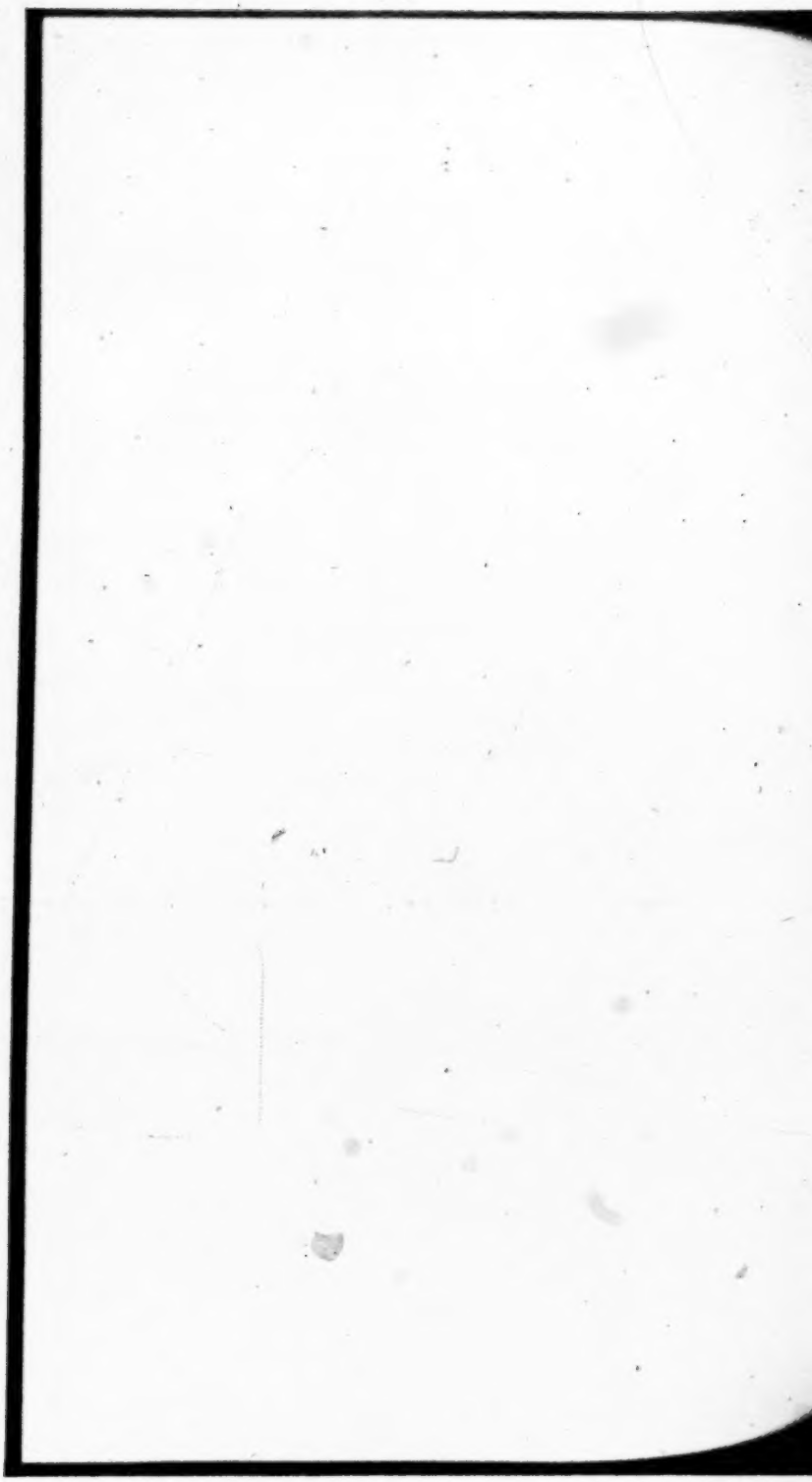

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ADDENDUM

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

Case No. 71-156-Civ-J

THE AMERICAN WATERWAYS OPERATORS, INC., aDelaware corporation; GULF ATLANTIC TOWING CORPORATION, a Florida corporation; GLIDDENDURKEE, a division of SCM, CORPORATION, a New York corporation; DIXIE CARRIERS, INC., a Delaware corporation; OIL TRANSPORT COMPANY, INCORPORATED, a Louisiana corporation; NATIONAL MARINE SERVICE, INC., a Delaware corporation; NATIONAL MARINE SERVICE, INC., a Delaware corporation; THE REVILO CORPORATION, a Florida corporation; EASTERN SEABOARD PETROLEUM COMPANY, INC., a Florida corporation; NILO BARGE LINE, INC., a Delaware corporation; STEUART TRANSPORTATION COMPANY, a Delaware corporation; INTERSTATE OIL TRANSPORT COMPANY, a Delaware corporation; FEDERAL BARGE LINES, INC., a Delaware corporation; GULF CANAL LINES, INC., a Texas corporation; and INGRAM OCEAN SYSTEM, INC., a Delaware corporation, all authorized to do business in the State of Florida,

Plaintiffs,

and

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SUWANNEE STEAMSHIP CO., a Florida corporation; COMMODORES POINT TERMINAL CORPORATION, a Delaware corporation; AMERICAN INSTITUTE OF MERCHANT SHIPPING; ASSURANCE FORENINGEN GARD; ASSURANCE FORENINGEN SKULD; THE BRITANNIA STEAM SHIP INSURANCE ASSOCIATION, LIMITED; THE JAPAN SHIP OWNERS MUTUAL PROTECTING AND INDEMNITY ASSOCIATION; THE LIVERPOOL AND LONDON STEAM SHIP PROTECTION AND INDEMNITY ASSOCIATION, LIMITED; THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION, LIMITED; NEWCASTLE PROTECTION AND INDEMNITY ASSOCIATION; THE NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCIATION, LIMITED; THE STANDARD STEAMSHIP OWNERS' PROTECTION & INDEMNITY ASSOCIATION; THE STANDARD STEAMSHIP OWNERS' PROTECTION AND INDEMNITY ASSOCIATION (BERMUDA), LIMITED; THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION, LIMITED; SUNDERLAND STEAMSHIP PROTECTING AND INDEMNITY ASSOCIATION; SVERIGES ANGFARTYGS ASSURANSFORENING; THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA), LIMITED; THE WEST OF ENGLAND SHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG); and their respective members,

Intervening Plaintiffs,

vs.

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REUBIN O'D ASKEW, as Governor of the State of Florida; RICHARD B. STONE, as Secretary of State of the State of Florida; ROBERT L. SHEVIN, as Attorney General of the State of Florida; FLOYD T. CHRISTIAN, as Commissioner of Education of the State of Florida; DOYLE E. CONNOR, as Commissioner of Agriculture of the State of Florida; FRED O. DICKINSON, JR., as Comptroller of the State of Florida; THOMAS D. O'MALLEY, JR., as Treasurer of the State of Florida; as and constituting THE DEPARTMENT OF NATURAL RESOURCES, State of Florida; RANDOLPH HODGES, as Executive Director, and TOM SIMPSON, as Conservation Officer of Duval County, DEPARTMENT OF NATURAL RESOURCES, State of Florida; and THE STATE OF FLORIDA,

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Defendants REUBIN O'D. ASKEW, as Governor of the State of Florida; RICHARD B. STONE, as Secretary of State of the State of Florida; ROBERT L. SHEVIN, as Attorney General of the State of Florida; FLOYD T. CHRISTIAN, as Commissioner of Education of the State of Florida;

PROOF OF SERVICE

I, Daniel S. Dearing, hereby certify that on the 22nd day of December, 1971, I served copies of the foregoing Notice of Appeal on the several parties hereto as follows:

On Plaintiffs THE AMERICAN WATERWAYS OPERATORS, INC.; GULF ATLANTIC TOWING CORPORATION; GLIDDENDURKEE; DIXIE CARRIERS, INC.; OIL TRANSPORT COMPANY, INC.; NATIONAL MARINE SERVICE, INC.; THE REVILO CORPORATION; EASTERN SEA-BOARD PETROLEUM COMPANY, INC.; STEUART TRANSPORTATION COMPANY; INTERSTATE OIL TRANSPORT COMPANY; FEDERAL BARGE LINES, INC.; GULF CANAL LINES, INC.; INGRAM OCEAN SYSTEM, INC., by mailing three copies to them c/o Ervin, Pennington, Varn & Jacobs, Attorneys for Original Plaintiffs, P. O. Box 1170, Tallahassee, Florida 32302;

and

On Intervening Plaintiffs SUWANNEE STEAMSHIP CO. and COMMODORES POINT TERMINAL CORPORATION by mailing three copies to them c/o KURZ, TOOLE,TAYLOR, MOSELEY & GABEL, Attorneys for the above-named Intervening Plaintiffs, Suite 1014 Barnett Bank Building, 112 West Adam Street, Jacksonville, Florida 32202; and

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DOYLE E. CONNER, as Commissioner of Agriculture of the State of Florida; FRED O. DICKINSON, JR., as Comptroller of the State of Florida; THOMAS D. O'MALLEY, JR., as Treasurer of the State of Florida; as and constituting THE DEPARTMENT OF NATURAL RESOURCES, State of Florida; RANDOLPH HODGES, as Executive Director, and TOM SIMPSON, as Conservation Officer of Duval County, Department of Natural Resources, State of Florida; and THE STATE OF FLORIDA, hereby appeal to the Supreme Court of the United States from the final judgment in favor of Plaintiffs and Intervening Plaintiffs entered in this action on December 10, 1971.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

s/ Daniel S. Dearing
DANIEL S. DEARING
Chief Trial Counsel
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

Attorneys for Defendants

On Intervening Plaintiffs AMERICAN INSTITUTE OF MERCHANT SHIPPING; ASSURANCE FORENINGEN GARD; ASSURANCE FORENINGEN SKULD; THE BRITANNIA STEAM SHIP INSURANCE ASSOCIATION, LIMITED; THE JAPAN SHIP OWNERS MUTUAL PROTECTING AND INDEMNITY ASSOCIATION LIMITED; THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION, LIMITED; NEWCASTLE PROTECTION AND INDEMNITY ASSOCIATION; THE NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCIATION, LIMITED; THE STANDARD STEAMSHIP OWNERS' PROTECTION & INDEMNITY ASSOCIATION; THE STANDARD STEAMSHIP OWNERS' PROTECTION AND INDEMNITY ASSOCIATION (BERMUDA), LIMITED; THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION, LIMITED; SUNDERLAND STEAMSHIP PROTECTING AND INDEMNITY ASSOCIATION; SVERIGES ANGFARTYGS ASSURANSFORENING; THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA), LIMITED; THE WEST OF ENGLAND SHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG); and their respective members, by mailing three copies to them c/o Fowler, White, Gillen, Humkey, Kinney & Boggs, P. O. Box 1438, Tampa, Florida 33601; Haight, Gardner, Poor & Havens, 80 Broad Street, New York, New York 10004; and Healy & Baillie, 29 Broadway, New York, New York 10006, Attorneys for the above-named Intervening Plaintiffs.

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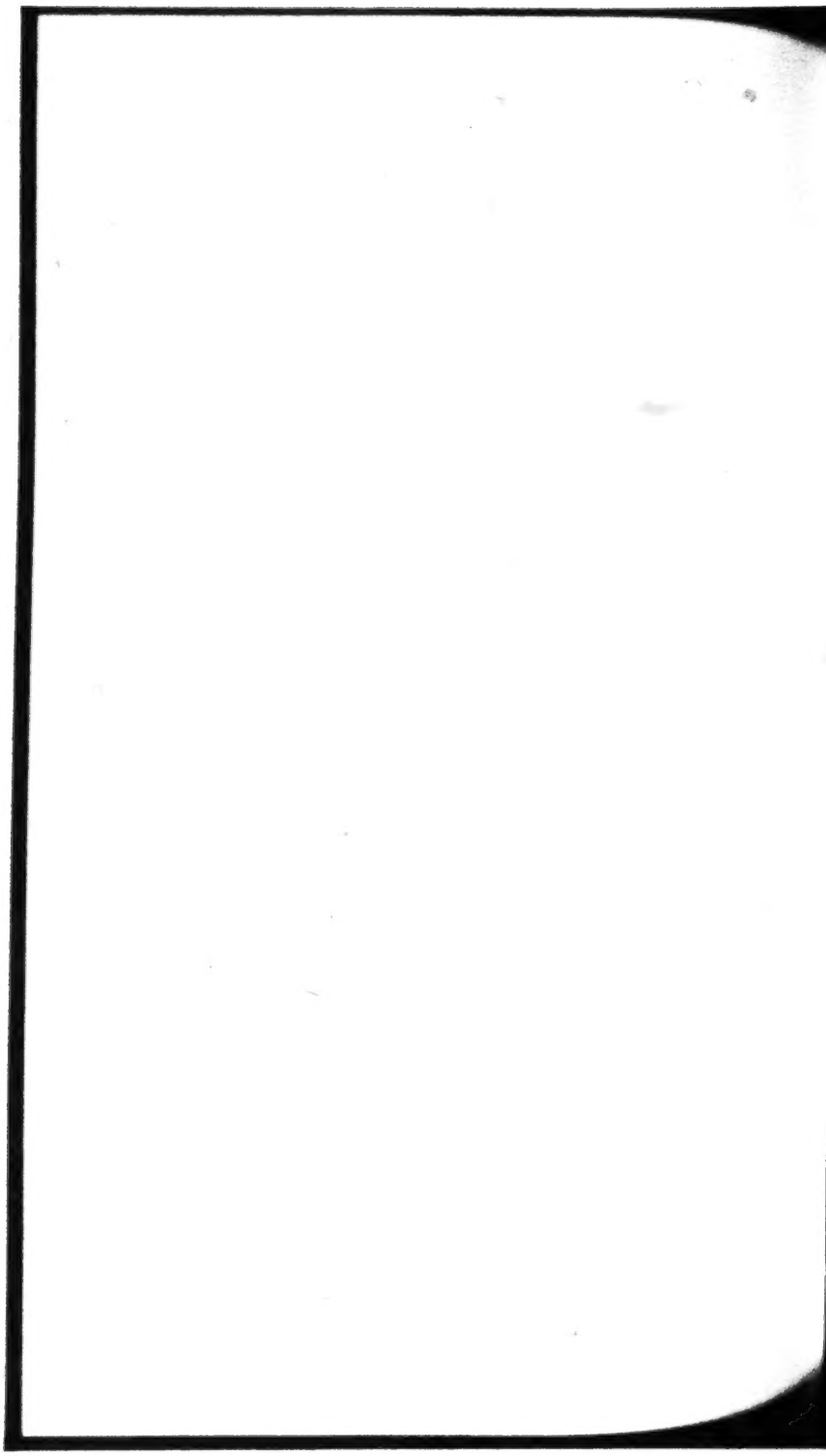
s/ Daniel S. Dearing
DANIEL S. DEARING
Chief Trial Counsel
Department of Legal Affairs
The Capitol
Tallahassee, Florida



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